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9  
10 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke Probation  
13 Against:

Case No. 2004-7

14 DEBORAH JEAN SMITH  
6250 Holabird Street, #28  
15 San Diego, CA 92120

**PETITION TO REVOKE  
PROBATION**

16 Registered Nurse License No. 415129

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Petition to Revoke  
22 Probation solely in her official capacity as the Executive Officer of the Board of Registered  
23 Nursing, Department of Consumer Affairs.

24 2. On or about August 31, 1987, the Board of Registered Nursing issued Registered  
25 Nurse License No. 415129 to Deborah Jean Smith (Respondent). The license will expire on June  
26 30, 2009.

27 3. In a disciplinary action entitled "In the Matter of Accusation Against Deborah  
28 Jean Smith," Case No. 2004-7, the Board of Registered Nursing issued a decision, effective

1 August 20, 2004, in which Respondent's registered nurse license was revoked. However, the  
2 revocation was stayed and Respondent's license was placed on probation for a period of three (3)  
3 years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is  
4 incorporated by reference.

### 5 JURISDICTION

6 4. This Petition to Revoke Probation is brought before the Board of Registered  
7 Nursing (Board), Department of Consumer Affairs, under the authority of Business and  
8 Professions Code ("Code") section 2750, which provides, in pertinent part, that the Board may  
9 discipline any licensee, including a licensee holding a temporary or an inactive license, for any  
10 reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

11 5. Jurisdiction for this Petition to Revoke probation is also based on Decision 2004-  
12 7, which provides in pertinent part as follows:

13 IT IS HEREBY ORDERED that Registered Nurse License No. 415129 issued to  
14 Respondent Deborah Jean Smith is revoked. However, the revocation is stayed  
15 and Respondent is placed on probation for three (3) years on the following terms  
16 and conditions.

17 . . . .

18 12. Violation of Probation. If Respondent violates the conditions of her probation,  
19 the Board, after giving Respondent notice and an opportunity to be heard, may  
20 set aside the stay order and impose the stayed discipline (revocation/suspension) of  
21 Respondent's license.

22 If during the period of probation, an accusation or petition to revoke probation  
23 has been filed against Respondent's license or the Attorney General's office has been  
24 requested to prepare an accusation or petition to revoke probation against Respondent's  
25 license, the probationary period shall automatically be extended and shall not expire  
26 until the accusation or petition has been acted upon by the Board.

27 . . . .

### 28 CHARGES AND ALLEGATIONS

#### FIRST CAUSE TO REVOKE PROBATION

(Complete Nursing Courses)

6. At all times after the effective date of Respondent's probation, Condition 10  
required Respondent to take, successfully complete (no later than 6 months before the end of  
probation) and submit transcripts or certificates of completion to the Board, of nursing courses  
the Board would require her to take as part of probation. Respondent has failed to complete

1 and/or provide to the Board certifications of completion for at least 4 assigned courses, as  
2 follows: Professional Ethics, Legal Aspects of Nursing, Stress Management, Relapse Prevention  
3 and Plan Development.

4 Respondent's probation is subject to revocation because she failed to comply with  
5 Probation Condition 10.

#### 6 SECOND CAUSE TO REVOKE PROBATION

##### 7 (Cost Recovery)

8 7. At all times after the effective date of Respondent's probation, Condition 11  
9 required payment by Respondent to the Board of cost recovery in the amount of \$5,330.00.  
10 Respondent was allowed to pay the costs pursuant to a payment plan, which plan was provided to  
11 her by the Board on or about May 9, 2005. Respondent made no payments thereafter. In August  
12 2006, Respondent stated she would start making small payments in September 2006.  
13 Respondent has made no payments.

14 Respondent's probation is subject to revocation because she failed to comply with  
15 Probation Condition 11.

#### 16 THIRD CAUSE TO REVOKE PROBATION

##### 17 (Abstain from Use of Alcohol)

18 8. At all times after the effective date of Respondent's probation, Condition 16  
19 required Respondent to abstain from, among other things, the use of alcohol. Respondent has  
20 tested positive for Ethyl Glucuronide, an alcohol bio-marker, on the following dates: 9/13/06,  
21 10/2/06, 10/19/06, 1/19/07, 2/26/07, 3/7/07, 5/2/07, 5/22/07, 7/5/07, 7/24/07, and 8/2/07.

22 Respondent's probation is subject to revocation because she failed to comply with  
23 Probation Condition 16.

#### 24 FOURTH CAUSE TO REVOKE PROBATION

##### 25 (Failure to File Quarterly Report)

26 9. At all times after the effective date of Respondent's probation, Condition 5  
27 required Respondent to file quarterly reports to the Board. Respondent failed to file a quarterly  
28 report that was due July 7, 2007.

1 Respondent's probation is subject to revocation because she failed to comply with  
2 Probation Condition 5.

3 FIFTH CAUSE TO REVOKE PROBATION

4 (Failure to Participate in Treatment/Rehabilitation Program)

5 10. At all times after the effective date of Respondent's probation, Condition 15  
6 required Respondent to enter and successfully complete a Board-approved  
7 treatment/rehabilitation program of at least six-months duration. By Board letter of June 5, 2007,  
8 Respondent was ordered to enroll in such a program by June 27, 2007. She has not done so.

9 Respondent's probation is subject to revocation because she failed to comply with  
10 Probation Condition 15.

11 SIXTH CAUSE TO REVOKE PROBATION

12 (Failure to Comply and Cooperate With Probation Monitoring)

13 11. At all times after the effective date of Respondent's probation, Condition 2  
14 required Respondent to comply with the terms and conditions of her probation and to cooperate  
15 with the Board's personnel monitoring her. Respondent has failed to comply with the terms and  
16 conditions of her probation, as noted in Causes to Revoke Probation 1, 2, 3, 4, and 5 above and  
17 incorporated herein by reference. Respondent has also failed to cooperate with the Board's  
18 monitor and her probationary program in that she has failed to perform the following tasks  
19 required of her and about which the Board notified her in writing on June 5, 2007: 1) provide a  
20 letter of explanation for her failure to abstain from alcohol; 2) provide a letter from her  
21 supervisor; 3) provide a letter from her mental health examiner; 4) provide evidence by June 27,  
22 2007 that she (Smith) has entered a rehabilitation program; 5) provide evidence of increased  
23 attendance at AA/NA support group(s); and 6) sign and return various "Release of Confidential  
24 Information" forms.

25 Respondent's probation is subject to revocation because she failed to comply with  
26 Probation Condition 2.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking the probation that was granted by the Board of Registered Nursing in  
5 Case No. 2004-7 and imposing the disciplinary order that was stayed thereby revoking Registered  
6 Nurse License No. 415129 issued to Deborah Jean Smith ;

7 2. Taking such other and further action as deemed necessary and proper.

8 DATED: 8/13/07

9  
10 Ruth Ann Terry  
11 RUTH ANN TERRY, M.P.H., R.N.  
12 Executive Officer  
13 Board of Registered Nursing  
14 Department of Consumer Affairs  
15 State of California  
16 Complainant  
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**Exhibit A**

**Decision and Order**

**Board of Registered Nursing Case No. 2004-7**

**BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DEBORAH JEAN SMITH  
6250 Holabird Street, #28  
San Diego, CA 92120

Registered Nurse License No. 415129

Respondent.

Case No. 2004-7

OAH No. L-2003070832

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on August 20, 2004.

It is so ORDERED July 21, 2004.

*Sandra L. Erickson*

\_\_\_\_\_  
FOR THE BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS

1 BILL LOCKYER, Attorney General  
of the State of California  
2 SUSAN FITZGERALD, State Bar No. 112278  
Deputy Attorney General  
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9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 DEBORAH JEAN SMITH  
6250 Holabird Street, #28  
14 San Diego, CA 92120

15 Registered Nurse License No. 415129

16 Respondent.

Case No. 2004-7

OAH No. L-2003070832

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
18 above-entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of  
21 the Board of Registered Nursing. She brought this action solely in her official capacity and is  
22 represented in this matter by Bill Lockyer, Attorney General of the State of California, by Susan  
23 Fitzgerald, Deputy Attorney General.

24 2. Deborah Jean Smith (Respondent) is representing herself in this  
25 proceeding and has chosen not to exercise her right to be represented by counsel.

26 3. On or about August 31, 1987, the Board of Registered Nursing issued  
27 Registered Nurse license no. 415129 to Deborah Jean Smith (Respondent). The license will  
28 expire on June 30, 2005, unless renewed.



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professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

### CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

### DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 415129 issued to Respondent Deborah Jean Smith is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

**Severability Clause.** Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1           1.       **Obey All Laws.** Respondent shall obey all federal, state and local laws.  
2 A full and detailed account of any and all violations of law shall be reported by Respondent to  
3 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of  
4 compliance with this condition, Respondent shall submit completed fingerprint forms and  
5 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted  
6 as part of the licensure application process.

7                   **Criminal Court Orders:** If Respondent is under criminal court orders, including  
8 probation or parole, and the order is violated, this shall be deemed a violation of these probation  
9 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

10           2.       **Comply with the Board's Probation Program.** Respondent shall fully  
11 comply with the conditions of the Probation Program established by the Board and cooperate  
12 with representatives of the Board in its monitoring and investigation of the Respondent's  
13 compliance with the Board's Probation Program. Respondent shall inform the Board in writing  
14 within no more than 15 days of any address change and shall at all times maintain an active,  
15 current license status with the Board, including during any period of suspension.

16                   Upon successful completion of probation, Respondent's license shall be fully  
17 restored.

18           3.       **Report in Person.** Respondent, during the period of probation, shall  
19 appear in person at interviews/meetings as directed by the Board or its designated  
20 representatives.

21           4.       **Residency, Practice, or Licensure Outside of State.** Periods of  
22 residency or practice as a registered nurse outside of California shall not apply toward a reduction  
23 of this probation time period. Respondent's probation is tolled, if and when she resides outside  
24 of California. Respondent must provide written notice to the Board within 15 days of any change  
25 of residency or practice outside the state, and within 30 days prior to re-establishing residency or  
26 returning to practice in this state.

27                   Respondent shall provide a list of all states and territories where she has ever been  
28 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further

1 provide information regarding the status of each license and any changes in such license status  
2 during the term of probation. Respondent shall inform the Board if she applies for or obtains a  
3 new nursing license during the term of probation.

4           **5. Submit Written Reports.** Respondent, during the period of probation,  
5 shall submit or cause to be submitted such written reports/declarations and verification of actions  
6 under penalty of perjury, as required by the Board. These reports/declarations shall contain  
7 statements relative to Respondent's compliance with all the conditions of the Board's Probation  
8 Program. Respondent shall immediately execute all release of information forms as may be  
9 required by the Board or its representatives.

10           Respondent shall provide a copy of this Decision to the nursing regulatory agency  
11 in every state and territory in which she has a registered nurse license.

12           **6. Function as a Registered Nurse.** Respondent, during the period of  
13 probation, shall engage in the practice of registered nursing in California for a minimum of 24  
14 hours per week for 6 consecutive months or as determined by the Board.

15           For purposes of compliance with the section, "engage in the practice of registered  
16 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or  
17 work in any non-direct patient care position that requires licensure as a registered nurse.

18           The Board may require that advanced practice nurses engage in advanced practice  
19 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the  
20 Board.

21           If Respondent has not complied with this condition during the probationary term,  
22 and Respondent has presented sufficient documentation of her good faith efforts to comply with  
23 this condition, and if no other conditions have been violated, the Board, in its discretion, may  
24 grant an extension of Respondent's probation period up to one year without further hearing in  
25 order to comply with this condition. During the one year extension, all original conditions of  
26 probation shall apply.

27           **7. Employment Approval and Reporting Requirements.** Respondent  
28 shall obtain prior approval from the Board before commencing or continuing any employment,

1 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all  
2 performance evaluations and other employment related reports as a registered nurse upon request  
3 of the Board.

4 Respondent shall provide a copy of this Decision to her employer and immediate  
5 supervisors prior to commencement of any nursing or other health care related employment.

6 In addition to the above, Respondent shall notify the Board in writing within  
7 seventy-two (72) hours after she obtains any nursing or other health care related employment.

8 Respondent shall notify the Board in writing within seventy-two (72) hours after she is  
9 terminated or separated, regardless of cause, from any nursing, or other health care related  
10 employment with a full explanation of the circumstances surrounding the termination or  
11 separation.

12 8. **Supervision.** Respondent shall obtain prior approval from the Board  
13 regarding Respondent's level of supervision and/or collaboration before commencing or  
14 continuing any employment as a registered nurse, or education and training that includes patient  
15 care.

16 Respondent shall practice only under the direct supervision of a registered nurse  
17 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative  
18 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)  
19 are approved.

20 Respondent's level of supervision and/or collaboration may include, but is not  
21 limited to the following:

22 (a) Maximum - The individual providing supervision and/or collaboration is  
23 present in the patient care area or in any other work setting at all times.

24 (b) Moderate - The individual providing supervision and/or collaboration is in  
25 the patient care unit or in any other work setting at least half the hours Respondent works.

26 (c) Minimum - The individual providing supervision and/or collaboration has  
27 person-to-person communication with Respondent at least twice during each shift worked.

28 (d) Home Health Care - If Respondent is approved to work in the home health

care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of

completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$5,330.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

12. **Violation of Probation.** If Respondent violates the conditions of her probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

13. **License Surrender.** During Respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent

will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

(1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

(2) One year for a license surrendered for a mental or physical illness.

14. **Physical Examination.** Within 45 days of the effective date of this Decision, Respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the Respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If Respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and Respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, Respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified Respondent that a medical determination permits Respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If Respondent fails to have the above assessment submitted to the Board within the 45-day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of



1 this probationary time period. The Board may waive or postpone this suspension only if  
2 significant, documented evidence of mitigation is provided. Such evidence must establish good  
3 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be  
4 provided. Only one such waiver or extension may be permitted.

5           **15. Participate in Treatment/Rehabilitation Program for Chemical**  
6 **Dependence.** Respondent, at her expense, shall successfully complete during the probationary  
7 period or shall have successfully completed prior to commencement of probation a Board-  
8 approved treatment/rehabilitation program of at least six months duration. As required, reports  
9 shall be submitted by the program on forms provided by the Board. If Respondent has not  
10 completed a Board-approved treatment/rehabilitation program prior to commencement of  
11 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in  
12 a program. If a program is not successfully completed within the first nine months of probation,  
13 the Board shall consider Respondent in violation of probation.

14           Based on Board recommendation, each week Respondent shall be required to  
15 attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics  
16 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed  
17 by the Board. If a nurse support group is not available, an additional 12-step meeting or  
18 equivalent shall be added. Respondent shall submit dated and signed documentation confirming  
19 such attendance to the Board during the entire period of probation. Respondent shall continue  
20 with the recovery plan recommended by the treatment/rehabilitation program or a licensed  
21 mental health examiner and/or other ongoing recovery groups.

22           **16. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent  
23 shall completely abstain from the possession, injection or consumption by any route of all  
24 psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a  
25 health care professional legally authorized to do so as part of documented medical treatment.  
26 Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the  
27 prescribing health professional, a report identifying the medication, dosage, the date the  
28 medication was prescribed, the Respondent's prognosis, the date the medication will no longer

1 be required, and the effect on the-recovery plan, if appropriate.

2           Respondent shall identify for the Board a single physician, nurse practitioner or  
3 physician assistant who shall be aware of Respondent's history of substance abuse and will  
4 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled  
5 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician  
6 assistant shall report to the Board on a quarterly basis Respondent's compliance with this  
7 condition. If any substances considered addictive have been prescribed, the report shall identify a  
8 program for the time limited use of any such substances.

9           The Board may require the single coordinating physician, nurse practitioner, or  
10 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in  
11 addictive medicine.

12           **17. Submit to Tests and Samples.** Respondent, at her expense, shall  
13 participate in a random, biological fluid testing or a drug screening program which the Board  
14 approves. The length of time and frequency will be subject to approval by the Board.  
15 Respondent is responsible for keeping the Board informed of Respondent's current telephone  
16 number at all times. Respondent shall also ensure that messages may be left at the telephone  
17 number when she is not available and ensure that reports are submitted directly by the testing  
18 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately  
19 to the Board by the program and Respondent shall be considered in violation of probation.

20           In addition, Respondent, at any time during the period of probation, shall fully  
21 cooperate with the Board or any of its representatives, and shall, when requested, submit to such  
22 tests and samples as the Board or its representatives may require for the detection of alcohol,  
23 narcotics, hypnotics, dangerous drugs, or other controlled substances.

24           If Respondent has a positive drug screen for any substance not legally authorized  
25 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the  
26 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent  
27 from practice pending the final decision on the petition to revoke probation or the accusation.  
28 This period of suspension will not apply to the reduction of this probationary time period.

1           If Respondent fails to participate in a random, biological fluid testing or drug  
2 screening program within the specified time frame, Respondent shall immediately cease practice  
3 and shall not resume practice until notified by the Board. After taking into account documented  
4 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the  
5 Board may suspend Respondent from practice pending the final decision on the petition to  
6 revoke probation or the accusation. This period of suspension will not apply to the reduction of  
7 this probationary time period.

8           **18. Mental Health Examination.** Respondent shall, within 45 days of the  
9 effective date of this Decision, have a mental health examination including psychological testing  
10 as appropriate to determine her capability to perform the duties of a registered nurse. The  
11 examination will be performed by a psychiatrist, psychologist or other licensed mental health  
12 practitioner approved by the Board. The examining mental health practitioner will submit a  
13 written report of that assessment and recommendations to the Board. All costs are the  
14 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a  
15 result of the mental health examination will be instituted and followed by Respondent.

16           If Respondent is determined to be unable to practice safely as a registered nurse,  
17 the licensed mental health care practitioner making this determination shall immediately notify  
18 the Board and Respondent by telephone, and the Board shall request that the Attorney General's  
19 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease  
20 practice and may not resume practice until notified by the Board. During this period of  
21 suspension, Respondent shall not engage in any practice for which a license issued by the Board  
22 is required, until the Board has notified Respondent that a mental health determination permits  
23 Respondent to resume practice. This period of suspension will not apply to the reduction of this  
24 probationary time period.


25           If Respondent fails to have the above assessment submitted to the Board within  
26 the 45-day requirement, Respondent shall immediately cease practice and shall not resume  
27 practice until notified by the Board. This period of suspension will not apply to the reduction of  
28 this probationary time period. The Board may waive or postpone this suspension only if

1 significant, documented evidence of mitigation is provided. Such evidence must establish good  
2 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be  
3 provided. Only one such waiver or extension may be permitted.

4 ACCEPTANCE

5 I have carefully read the Stipulated Settlement and Disciplinary Order. I  
6 understand the stipulation and the effect it will have on-my Registered Nurse License. I enter  
7 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,  
8 and agree to be bound by the Decision and Order of the Board of Registered Nursing.

9 DATED: February 4, 2004.

10  
11   
12 DEBORAH JEAN SMITH  
13 Respondent  
14

15 ENDORSEMENT

16 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
17 submitted for consideration by the Board of Registered Nursing of the Department of Consumer  
18 Affairs.

19  
20 DATED: February 5, 2004.

21 BILL LOCKYER, Attorney General  
22 of the State of California

23   
24 SUSAN FITZGERALD  
25 Deputy Attorney General

26 Attorneys for Complainant  
27  
28

**Exhibit A**  
**Accusation No. 2004-7**

1 BILL LOCKYER, Attorney General  
of the State of California  
2 SUSAN FITZGERALD, State Bar No. 112278  
Deputy Attorney General  
3 California Department of Justice  
110 West "A" Street, Suite 1100  
4 San Diego, CA 92101

5 P.O. Box 85266  
San Diego, CA 92186-5266  
6 Telephone: (619) 645-2066  
Facsimile: (619) 645-2061

7 Attorneys for Complainant  
8

9  
10 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2004 - 7

13 **DEBORAH JEAN SMITH**

14 6250 Holabird Street, #28  
San Diego, CA 92120

15 Registered Nurse License No. 415129

**ACCUSATION**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation  
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,  
21 Department of Consumer Affairs.

22 2. On or about August 31, 1987, the Board of Registered Nursing ("Board")  
23 issued Registered Nurse License Number 415129 to Deborah Jean Smith (hereinafter  
24 "Respondent"). The license will expire on June 30, 2005.

25 **STATUTORY PROVISIONS**

26 3. Section 2750 of the Business and Professions Code ("Code") provides that  
27 the Board may discipline any licensee, including a licensee holding a temporary or an inactive  
28 ///

1 license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing  
2 Practice Act.

3 4. Section 2764 of the Code provides that the expiration of a license shall not  
4 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or  
5 to render a decision imposing discipline on the license.

6 5. Section 2811(b) of the Code provides that the Board may renew an expired  
7 license at any time within eight years after the expiration.

8 6. Section 2761 of the Code provides, in pertinent part:

9 "The board may take disciplinary action against a certified or licensed nurse or  
10 deny an application for a certificate or license for unprofessional conduct.

11 7. Section 2762 of the Code provides, in pertinent part:

12 "In addition to other acts constituting unprofessional conduct within the meaning  
13 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed  
14 under this chapter to do any of the following:

15 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a  
16 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish  
17 or administer to another, any controlled substance as defined in Division 10 (commencing with  
18 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as  
19 defined in Section 4022.

20 "(b) Use any controlled substance as defined in Division 10 (commencing with  
21 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as  
22 defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or  
23 injurious to himself or herself, any other person, or the public or to the extent that such use  
24 impairs his or her ability to conduct with safety to the public the practice authorized by his or her  
25 license."

26 8. Section 125.3 of the Code provides that the Board may request the  
27 administrative law judge to direct a licensee found to have committed a violation or violations  
28 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

1 enforcement of the case.

2 **DRUGS**

3 9. Alprazolam is a benzodiazepine class drug and a Schedule IV controlled  
4 substance as designated by Health and Safety Code section 11057(d)(1).

5 10. Morphine is a narcotic and a Schedule II controlled substance as  
6 designated by Health and Safety Code section 11055(b)(1)(M). MS Contin is controlled release  
7 morphine sulphate and is also a Schedule II controlled substance.

8 11. Pentazocine hydrochloride is a Schedule IV controlled substance as  
9 designated by Health and Safety Code section 11057(g).

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct: Dangerous or Injurious Use of Controlled Substances)**

12 12. Respondent's registered nurse license is subject to disciplinary action  
13 under sections 2761(a) and 2762(b) of the Code in that on or about September 24, 2000, while  
14 on-duty as a registered nurse at Children's Hospital San Diego, located in San Diego, California,  
15 Respondent was under the influence of at least MS-Contin, if not also alprazolam and  
16 pentazocine hydrochloride to such an extent or in such a manner as to be dangerous or injurious  
17 to herself, any other person, or the public or to the extent that such usage impaired Respondent's  
18 ability to conduct with safety to the public the practice of nursing.

19 The facts and circumstances surrounding this allegation are that respondent was  
20 self-administering at least MS-Contin, which she had taken from her mother's medications for  
21 her own use. On September 24, 2000, Respondent was so affected by the drug(s) she had taken  
22 that she could not stay awake on duty.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct: Obtain, Possess, Self-Administer Controlled Substances)**

25 13. Respondent's registered nurse license is subject to disciplinary action  
26 under sections 2761(a) and 2762(a) of the Code in that on or about September 27, 2000,  
27 Respondent obtained, possessed, and self-administered morphine (probably as MS-Contin),  
28 alprazolam, and pentazocine hydrochloride, without a prescription for any of these drugs.




**PRAYER**

**WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing the Board issue a decision:

1. Revoking or suspending Registered Nurse License Number 415129 issued to Deborah Jean Smith;
2. Ordering Deborah Jean Smith to pay the reasonable costs incurred by the Board in the investigation and enforcement of this case pursuant to section 125.3 of the Code;
3. Taking such other and further action as deemed necessary and proper.

DATED: 7/10/03

  
\_\_\_\_\_  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant